

Remarks

Claims 1-2 are amended in this paper. Accordingly, claims 1-10 are now pending.

Rejections under 35 U.S.C. § 102

Claims 1, 3, 8, and 9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,727,748, issued to Brown [hereinafter *Brown*]. This rejection is understood to be based in part on the premise that *Brown* discloses a bait container having a cylindrical housing C with an access opening (not labeled), an at least partially perforated carriage 8 located within the housing, a post 6 extending from the carriage and a door 13 substantially located in a vertical plane parallel to the central axis and arranged to move in the vertical plane between an open position to expose the access opening and a closed position to at least partially cover the access opening in response to movement of the post along the central axis. The rejection is also understood to be based in part on the premise that *Brown* further discloses a handle L, a lip 3, and a chamber on the inside of the housing C.

Applicant traverses the rejection. Claim 1 recites a bait container comprising a housing defining an access opening, a central axis, and a chamber to accommodate water and bait therein. A carriage is located within the housing and defines at least one perforation to allow the passage of water therethrough. A post extends from the carriage substantially parallel to along the central axis and is movable in a direction substantially parallel to along the central axis. The post defines an elongated slot located substantially parallel to the central axis. A door is substantially located in a vertical plane parallel to the central axis. The door comprises a rigid link arranged to travel within the elongated slot and to interact with the post to cause the door to move in the vertical plane between an open position to expose the access opening and a closed position to at least partially cover the access opening and hinder egress of the bait from the chamber in response to movement of the post in the direction substantially parallel to along the central axis.

By contrast, *Brown* discloses a toothbrush holder. The canister is depicted in the figures as accommodating toothbrushes, rather than bait and water. The toothbrush holder disclosed in *Brown* lacks some of the features recited in claim 1, including, for

example, a post that defines an elongated slot and a door that has a rigid link arranged to travel within the elongated slot and to interact with the post to open and close the door.

Based on at least the above reasoning, Applicant respectfully submits that *Brown* does not disclose all of the limitations recited in claim 1, and therefore does not anticipate claim 1. Claims 3, 8, and 9 depend from claim 1 and incorporate all of the limitations recited in claim 1. Accordingly, *Brown* does not anticipate claims 3, 8, and 9.

Applicant respectfully requests that the rejection of claims 1, 3, 8, and 9 under 35 U.S.C. § 102(b) be withdrawn.

Rejections under 35 U.S.C. § 103

Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Brown*. This rejection is understood to be based in part on the premise that it would have been an obvious design choice to use a polyhedral housing rather than a cylindrical housing.

Applicant traverses the rejection. As discussed above in connection with claim 1, *Brown* does not disclose a bait container having all of the limitations as recited in claim 1, from which claim 10 depends. No additional reference is cited to supply the disclosure of all of the limitations of claim 1 in connection with the rejection of claim 10 under 35 U.S.C. § 103(a). Accordingly, *Brown* neither discloses nor suggests the bait container recited in claim 10. Applicant therefore respectfully requests withdrawal of the rejection of claim 10 under 35 U.S.C. § 103(a).

Claims 1-3 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 4,686,788, issued to Hartman [hereinafter *Hartman*] in view of U.S. Patent 2,024,692, issued to Kirmss [hereinafter *Kirmss*]. This rejection is understood to be based in part on the premise that *Hartman* discloses a bait container having a housing 10 that defines an access opening 13, a perforated carriage 16 located within the housing, and a post 20 extending from the carriage substantially along the central axis and movable along the central axis. *Hartman* is also asserted to disclose a door 14 substantially located in a vertical plane parallel to the central axis and arranged to move between an open position and a closed position as shown in Fig. 8 and Fig. 7 by rotating around pin 15. The rejection is further understood to be based in part on the additional premise that *Kirmss*

discloses a container 1 having a vertically movable door 19 to cover or expose an access opening 14.

Applicant traverses the rejection. *Kirmss* discloses a toothbrush holder, rather than a bait container. Per MPEP § 2141.01(a), to rely on a reference under 35 U.S.C. § 103(a), the reference must be analogous prior art. In particular, “[i]n order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.” *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992) (“A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commanded itself to an inventor's attention in considering his problem.”); *Wang Laboratories Inc. v. Toshiba Corp.*, 993 F.2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993); and *State Contracting & Eng'g Corp. v. Condotte America, Inc.*, 346 F.3d 1057, 1069, 68 USPQ2d 1481, 1490 (Fed. Cir. 2003) (where the general scope of a reference is outside the pertinent field of endeavor, the reference may be considered analogous art if subject matter disclosed therein is relevant to the particular problem with which the inventor is involved).

By the standards set forth above, toothbrush holders are not analogous art relative to bait containers. Applicant submits that a toothbrush holder would not logically commend itself to an inventor's attention in considering the problem of preventing the egress of bait from a bait container. Accordingly, Applicant respectfully submits reliance on the combination of *Hartman* and *Kirmss* as the foundation for a rejection under 35 U.S.C. § 103(a) is improper.

Even assuming, without conceding, that toothbrush holders are analogous art relative to bait containers, claims 1-3 are patentably distinct from *Hartman* in view of *Kirmss*. Claim 1 recites a bait container comprising a housing defining an access opening, a central axis, and a chamber to accommodate water and bait therein. A carriage is located within the housing and defines at least one perforation to allow the passage of water therethrough. A post extends from the carriage substantially parallel to along the central axis and is movable in a direction substantially parallel to along the

central axis. The post defines an elongated slot located substantially parallel to the central axis. A door is substantially located in a vertical plane parallel to the central axis. The door comprises a rigid link arranged to travel within the elongated slot and to interact with the post to cause the door to move in the vertical plane between an open position to expose the access opening and a closed position to at least partially cover the access opening and hinder egress of the bait from the chamber in response to movement of the post in the direction substantially parallel to along the central axis.

By contrast, neither *Hartman* nor *Kirmss*, considered singly or in combination, discloses a post that defines an elongated slot located substantially parallel to the central axis and a door that comprises a rigid link arranged to travel within the elongated slot and to interact with the post to cause the door to move in the vertical plane between an open position and a closed position. In particular, in the link means shown in Figures 7-9 of *Hartman*,

“A cross bar 26 extends between the lift handle leg members.

A rigid link 27 is provided at one end with a journal 28 which rotates relative to the cross bar 26. The opposite end of link 27 is connected adjacent the bottom edge portion of door 14 by means of a pivot joint 29. Thus, as seen in FIG. 8, when the lift handle and lift plate are raised and latched, door 14 is opened and remains open.”

See column 3, lines 12-19. Accordingly, Applicant respectfully submits that, rather than disclosing an elongated slot along the central axis with a door having a rigid link arranged to interact with the elongated slot to cause the door to move, *Hartman* actually discloses a pivot mechanism for opening the door. Similarly, *Kirmss* discloses a pivot mechanism for opening a lid of a toothbrush holder. See column 1, lines 35-44.

Claims 2-3 depend from claim 1 and recite additional features that further distinguish various embodiments of the present invention over the prior art. Claims 2-3 incorporate all of the limitations recited in claim 1 and are thus also patentably distinct from *Hartman* in view of *Kirmss*.

For at least these reasons, Applicant respectfully requests that the rejection of claims 1-3 under 35 U.S.C. § 103(a) as being unpatentable over *Hartman* in view of *Kirmss* be withdrawn.

Claims 4-5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Hartman* in view of *Kirmss* as applied to claim 3, and further in view of U.S. Patent 1,844,285, issued to Johnson [hereinafter *Johnson*]. The rejection is understood to be based in part on the premise that *Johnson* discloses a container having a locking arrangement. As discussed above in connection with claims 1-3, reliance on the combination of *Hartman* and *Kirmss* as the foundation for a rejection under 35 U.S.C. § 103(a) is improper. Further, *Johnson* discloses a weight sticker tube for holding labels indicating the weight of an item. See *Johnson* at column 1, lines 1-6. By the standards set forth above, weight sticker tubes are not analogous art relative to bait containers. Accordingly, reliance on *Johnson* as the foundation for a rejection under 35 U.S.C. § 103(a) is improper.

Even assuming, without conceding, that weight sticker tubes are analogous art relative to bait containers, claims 4-5 are patentably distinct from *Hartman* in view of *Kirmss* and further in view of *Johnson*. As discussed above in connection with claims 1-3, *Hartman* and *Kirmss* do not disclose, singly or in combination, a post that defines an elongated slot located substantially parallel to the central axis and a door that comprises a rigid link arranged to travel within the elongated slot and to interact with the post to cause the door to move in the vertical plane between an open position and a closed position. *Johnson* discloses neither a door comprising a rigid link nor a post defining an elongated slot that interacts with the rigid link to cause the door to move in the vertical plane between an open position and a closed position. Accordingly, neither *Hartman*, *Kirmss*, nor *Johnson* discloses the invention as recited in claims 4-5, whether considered singly or in combination.

For at least these reasons, Applicant respectfully requests that the rejection of claims 4-5 under 35 U.S.C. § 103(a) as being unpatentable over *Hartman* in view of *Kirmss* and further in view of *Johnson* be withdrawn.

Claims 6-7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Hartman* in view of *Kirmss* as applied to claim 1, and further in view of U.S. Patent 6,543,179, issued to Lee [hereinafter *Lee*]. This rejection is understood to be based in part on the premise that *Lee* discloses a plurality of tracks arranged to guide a door in a vertical plane. As discussed above in connection with claims 1-3, reliance on the

combination of *Hartman* and *Kirmss* as the foundation for a rejection under 35 U.S.C. § 103(a) is improper.

Even assuming that reliance on the combination of *Hartman* and *Kirmss* as the foundation for a rejection under 35 U.S.C. § 103(a) is proper, claims 6-7 are patentably distinct from *Hartman* in view of *Kirmss* and further in view of *Lee*. As discussed above in connection with claims 1-3, *Hartman* and *Kirmss* do not disclose, singly or in combination, a post that defines an elongated slot located substantially parallel to the central axis and a door that comprises a rigid link arranged to travel within the elongated slot and to interact with the post to cause the door to move in the vertical plane between an open position and a closed position. *Lee* does not disclose a door comprising a rigid link and a post defining an elongated slot that interacts with the rigid link to cause the door to move in the vertical plane between an open position and a closed position. Accordingly, neither *Hartman*, *Kirmss*, nor *Lee* discloses the invention as recited in claims 6-7, whether considered singly or in combination.

For at least these reasons, Applicant respectfully requests that the rejection of claims 6-7 under 35 U.S.C. § 103(a) as being unpatentable over *Hartman* in view of *Kirmss* and further in view of *Lee* be withdrawn.

Conclusion

On the basis of the foregoing, Applicant respectfully submits that claims 1-10 are now believed to be in condition for allowance. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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